

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE LORAZEPAM & CLORAZEPATE
ANTITRUST LITIGATION

MDL - 1290 (TFH/JMF)
Misc. No. 99ms276

Judge Thomas F. Hogan

This document relates to:

FILED

ST. CHARLES HOSPITAL and
REHABILITATION CENTER,

MAR 31 2003

Plaintiff,

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

v.

CV 1:99-790 (TFH/JMF)

MYLAN LABORATORIES, INC., et al.,

Defendants.

ADVOCATE HEALTH CARE, et al.,

Plaintiffs,

v.

CV 1:99-2228 (N.D. Ill.)

MYLAN LABORATORIES, INC., et al.,

Defendants.

**DISCOVERY ORDER SIGNED
BY THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**TO BE PRESENTED ON APPLICATION
TO THE COURTS OF APPEAL IN ITALY**

The United States District Court for the District of Columbia presents its compliments to the Italian Courts of Appeal, and requests international judicial assistance to obtain evidence to be used in a civil proceeding before this court in the above-captioned matter. Trial of this matter will occur in Washington, District of Columbia, United States of America.

The Plaintiffs in this matter make claims under the U.S. Antitrust laws. Plaintiffs allege that an agreement between Mylan Laboratories and Profarmaco constituted an unlawful

restraint of trade. Specifically, plaintiffs claim that Mylan Laboratories entered into an exclusive licensing agreement with Profarmaco in order to obtain complete control over the Profarmaco-manufactured supply of the active pharmaceutical ingredient of two drugs, lorazepam and clorazepate. Plaintiffs assert that Mylan intended to, and did, completely control Profarmaco's supply of these two active pharmaceutical ingredients, thus allowing Mylan to raise the prices on these two drugs.

Mylan seeks to secure specific documentary evidence in the possession of an Italian company, C.F.M. Co. Farmaceutica Milanese, SpA ("C.F.M. Farmaceutica Milanese"), as well as testimony from an individual employed by that company. As set forth below, documents produced in this litigation to date provide evidence that a competitor of Mylan's located in the United States procured Profarmaco-manufactured active pharmaceutical ingredient for lorazepam during the period that the agreements were in effect. The documents indicate that the competitor obtained this active pharmaceutical ingredient by engaging the services of, *inter alia*, C.F.M. Farmaceutica Milanese. The evidence sought by Mylan may be necessary for use at trial to prove or disprove certain allegations made by the plaintiffs against Mylan in this litigation.

This Court therefore has issued the following order for the production of documents and the taking of testimony pursuant to the United States Federal Rules of Civil Procedure. It is the Court's understanding that Mylan will present this order on application to the appropriate Court of Appeal in Italy, which will then determine whether to render this Court's order effective in the location where the evidence is to be collected.

ORDER

WHEREAS, this Court has reviewed Defendant Mylan's Motion for An Order Authorizing the Taking of Evidence In Italy; and

WHEREAS, Plaintiffs assert that Mylan intended to, and did, execute exclusive agreements with Profarmaco in order to completely control Profarmaco's supply of lorazepam and clorazepate active pharmaceutical ingredients in the United States, thus allowing Mylan to raise the prices on these two drugs; and

WHEREAS, document exchange in the United States has led to the discovery of certain documents that indicate that Purepac, a drug manufacturer in the United States, ordered and received some quantity of Profarmaco-manufactured lorazepam active pharmaceutical ingredient during the time that the agreements between Profarmaco and Mylan were in place by engaging the services of, *inter alia*, an Italian company, C.F.M. Farmaceutica Milanese; and

WHEREAS, the Court finds that Mylan seeks testimony and documents from C.F.M. Co. Farmaceutica Milanese, S.p.A. ("C.F.M. Farmaceutica Milanese") that are discoverable under U.S. law;

It is hereby ORDERED, as follows:

1. Upon the Order of an Italian Court of Appeal, C.F.M. Farmaceutica Milanese shall be compelled to produce for inspection and photocopying, within 30 days of the Order by the Italian Court:

- (a) All documents, including communications, whether in handwritten, printed, or electronic form, relating to transactions or proposed transactions between C.F.M. Farmaceutica Milanese and Profarmaco S.r.l., A.S.A.P. Logistics Ltd (doing business as Randy International), Masai Corporation, Faulding, Inc., Farmachem SA Machineries & Marketing or Purepac Pharmacuetical Company relating to lorazepam, clorazepate, or the active pharmaceutical ingredient for lorazepam or clorazepate between 1 January 1997 and 31 December 1999;
- (b) All documents, including communications, whether in handwritten, printed or electronic form, relating to shipments or proposed shipments of lorazepam, clorazepate or the active pharmaceutical ingredient for lorazepam or clorazepate that were sent or intended to be sent to any company in the United States between 1 January 1997 and 31 December 1999.

2. Upon the Order of an Italian Court of Appeal, C.F.M. Farmaceutica Milanese shall be compelled to produce for deposition the following witness:

Mr. Claudio Rebuzzini
Managing Director and Vice President
C.F.M. Farmaceutica Milanese
Via Ludovico Di Breme 33
Milano, MI 20156
Italy

The deposition will occur at the time and location set by the Italian Court of Appeal.

3. The witness may be questioned concerning the following topics:

- (a) All transactions, proposed transactions, or communications between C.F.M. Farmaceutica Milanese and Profarmaco S.r.l., A.S.A.P. Logistics Ltd (doing business as Randy International), Masai Corporation, Faulding, Inc., Farmachem SA Machineries & Marketing or Purepac Pharmacuetical Company involving to lorazepam, clorazepate, or the active pharmaceutical ingredient for lorazepam or clorazepate between 1 January 1997 and 31 December 1999.

- (b) All shipments, proposed shipments or communications relating to shipments or proposed shipments of lorazepam, clorazepate or the active pharmaceutical ingredient for lorazepam or clorazepate that were sent, that were intended to be sent, or that the witness has reason to believe were sent to any company in the United States between 1 January 1997 and 31 December 1999.

4. Upon the Order of an Italian Court of Appeal, the deposition will take place in accordance with the U.S. Federal Rules of Civil Procedure, so that:

- (a) The witness will be examined under oath or affirmation before a person authorized to administer oaths in the place where the examination is held, and will be instructed of the consequences of the giving of false answers under the laws of Italy.
- (b) The parties may be present at the deposition, as well as the parties' and the witness's representatives, designees, and interpreters.
- (c) The attorneys for the parties (or their interpreters) and for the witness will be permitted to directly question the witness.
- (d) A stenographer fluent in the language in which the deposition takes place will record a verbatim transcript of the deposition. The transcript will include:
 - (i) The name and business address of the person who administers the oath or affirmation to the witness and the text of that oath or affirmation;
 - (ii) The name and business address of the stenographer;
 - (iii) The date, time and place of the deposition;
 - (iv) The name of the witness;
 - (v) An identification of all persons present at the deposition;
 - (vi) Any stipulations by counsel concerning the custody of the transcript and the exhibits, or other pertinent matters.

The Italian Court of Appeal retains the discretion to enforce any and all portions of this Order in a manner that is not inconsistent with Italian rules of public order or in derogation of Italian law.

This Order is respectfully submitted by:

A handwritten signature in black ink, appearing to read "Thomas F. Hogan", written over a horizontal line.

Hon. Thomas F. Hogan
United States District Judge
United States District Court for the
District of Columbia
3333 Constitution Avenue, N.W.
Washington, D.C. 20001
United States of America

31 March, 2003